

R E M A R K S

Claims 1 - 38 are currently pending in the application, with claims 1 – 8 and 24 – 38 having been withdrawn from consideration. With this Amendment, Applicants amend claims 9 – 16, 18 and 20, and add new claims 39 – 41. No new matter is added.

ELECTION/RESTRICTION

On April 10, 2003, Applicants filed a Response to a Restriction Requirement of March 10, 2003 traversing restriction of the present application to 1 of 7 identified claim groups. Specifically, Applicants argued that claim group V (claims 9 – 23) and claim group VI (claims 24 – 26) together present a unitary invention directed to a method of impounding escrow funds of a merchant by an electronic funds processor (EFP).

An EFP serves as an intermediary in electronically processing credit/debit transactions between merchants and credit/debit card providers such as Visa/Master Card, Discover, Diner's Club and American Express (see, e.g., Applicants' specification at page 8, lines 5 – 13). Entities providing EFP services currently include First Data, Paymentech and others (see, e.g., Applicants' specification at page 15, line 16 through page 16, line 5).

In the present Office Action, the Examiner indicates that Applicants' arguments in the Response to Restriction Requirement were not persuasive, and that the restriction to the claims of group V has been made final. In rebuttal of the arguments, the Examiner suggests that the claims of group VI are drawn to processing of non-electronic funds, thereby inherently representing a process that could be performed by hand and thereby be distinguished from the claims of group V which represent electronic funds processing.

Applicants respectfully submit that this suggestion represents a mischaracterization of the processing claims in the claims of group VI.

For example, in claim 24, a method is claimed for impounding escrow funds by an EFP which is triggered by the receipt of a cash transaction report (not cash) from the merchant. The nature of EFP processing effectively requires that all funds receipts and transfers by the EFP occur electronically. Thus, the debiting and crediting steps implicitly require electronic funds transfers rather than non-electronic funds transfers.

As the restriction requirement has been made final, Applicants reserve their right to petition the Commissioner for review of the requirement at a later time in accordance with 37 C.F.R. § 1.144.

REJECTION UNDER 35 U.S.C. § 103

Claims 9 – 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,644,724 to Cretzler in view of U.S. Patent No. 6,230,928 to Hanna et al. Applicants amend claims 9 – 11, 14 – 16, 18 and 20 to clarify the nature of their invention, and respectfully traverse this rejection.

In independent claim 9, Applicants disclose a method for impounding escrow funds from credit/debit card transactions of a merchant that are transacted by the merchant at a merchant credit/debit card terminal for processing by an electronic funds processor (EFP). EFP processing of merchant credit/debit card transactions is defined to include the steps of processing credit/debit card transaction authorization requests received from the merchant, processing credit/debit card transaction authorizations received from one or more credit/debit card issuers to the merchant, and processing payment requests from the merchant concerning authorized credit/debit card transactions.

The claimed method adds the additional EFP processing steps of: a) determining an escrow portion for a payment associated with each credit/debit card transaction request by the merchant, b) storing information about each credit/debit card transaction request, including information specifying the escrow portion, c) determining an escrow amount for one or more credit/debit card transaction payment requests based on the stored information, and d) crediting an escrow account with the escrow amount.

Cretzler discloses a point-of-sale tax collection method and system by which a merchant may collect and store tax information associated with sales transactions, and which may be accessed periodically by a merchant bank for determining and making tax payments by wire transfer to various tax authorities (see, e.g., the abstract of Cretzler).

In sharp contrast to Applicants' claimed method, Cretzler's escrow information is processed and stored by a point-of-sale system operated by the merchant, rather than being processed by an EFP. In addition, as acknowledged by the Examiner, the method disclosed by Cretzler fails to teach or suggest Applicants' claimed EFP processing steps for determining an escrow portion for a debit/credit card transaction, and crediting an escrow account with an escrow amount. The Examiner suggests that these steps are however taught or suggested by Hanna.

Hanna discloses an ATM merchant banking apparatus for use by a merchant to carry out banking transactions (see, e.g., the abstract of Hanna). Hanna discloses that the apparatus may include an application directed to escrow tax amounts for transfer to tax authorities from merchant receipts deposited by the merchant in the ATM apparatus (see, e.g., column 11, lines 46 – 59 of Hanna). Thus, unlike Applicants' claimed method, the escrow account created by the apparatus of Hanna is not produced by means of credit/debit

card transactions processed by an EFP, but rather from funds directly deposited by the merchant in a merchant account. In summary, neither Cretzler nor Hanna, alone or together, disclose or otherwise suggest Applicants' claimed method for impounding escrow funds by an EFP, and directly from credit/debit card transactions of a merchant that are processed by the EFP.

Applicants' claimed approach provides clear advantages over the systems of Cretzler and Hanna. In the case of Hanna, a merchant must manually deposit and designate funds for escrow. In sharp contrast to Hanna, Applicants' claimed method automatically includes all merchant credit/debit card transactions processed by the EFP. In the case of Cretzler, the merchant must acquire and operate the point-of sale terminal system in order to create and manage an escrow account. In sharp contrast to Cretzler, Applicants' claimed method effectively eliminates merchant responsibilities for managing the escrow account from the merchant by integrating these responsibilities with other fund processing responsibilities currently performed by EFPs.

Accordingly, Applicants respectfully submit that independent claim 9 is not made obvious by the combination of Cretzler and Hanna, and is therefore in condition for allowance. As claims 10 – 23 depend from allowable claim 9, Applicants respectfully submit that claims 10 – 23 are allowable for at least this reason.

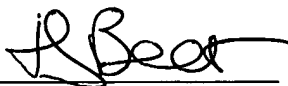
CONCLUSION

In view of the amendments and set forth above, this application is in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is

respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,



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TJB: pm